No. 82-2024

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In the Supreme Court of the United States

OCTOBER TERM, 1982

JOHN EARLY AND STEPHEN EARLY,
PETITIONERS,

v.

EASTERN TRANSFER AND FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN AND PACKERS, TEAMSTERS LOCAL 82, ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR EASTERN TRANSFER IN OPPOSITION

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I.

QUESTION PRESENTED

Does a local union representative who sits on a joint union-employer grievance committee whose decisions are final and binding under the terms of a collective bargaining agreement owe grievants appearing before the committee a duty of partiality?

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Opinions Below

The opinion of the Court of Appeals (Pet. App. B-1 to B-15) is reported at 699 F.2d 552. The memorandum opinion and order of the District Court (Pet. App. A-1 to A-5) is not officially reported.

Jurisdiction

The judgment of the Court of Appeals was entered on February 1, 1983. Justice Brennan granted an extension of time within which to file the petition to June 11, 1983, and the petition was timely filed. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

Statement of Facts

John and Stephen Early, as employees of Eastern Transfer, were working at Hynes Auditorium on Saturday, June 6, 1981, setting up a trade show. At approximately 8:30 p.m., they left their job without the express permission[1] of their employer and without completing their assignment. When they reported for work the next morning at 6:00 a.m., they and three other employees who had left with them were discharged. Representatives of Teamsters Local 82, who were present at 6:00 a.m., met informally with Company officials to review the discharge. The Company reduced the penalty of one employee to a suspension because he had been working for three hours longer than plaintiffs.

The four discharged employees, including the Earlys, filed formal grievances. The grievances were heard by a four-member joint committee.[2] The Union representatives to the

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[1] As Petitioners would readily acknowledge, an alleged factual dispute is not an appropriate basis for seeking certiorari. Accordingly, while the employer does not agree with certain statements of alleged fact set forth by Petitioners, the employer will not note herein each such difference. One point should be mentioned, however. Petitioners continue to claim the lower courts' finding that they left work without permission is unsupportable. This claim is totally lacking in merit. Petitioners never claimed to have the employer's express permission to leave work.

[2] The collective bargaining agreement provides that grievances not settled by steps one and two are to be heard by a joint committee consisting of equal numbers of union and employer representatives, with the latter from firms other than the employer against whom the grievance is filed. The joint committee's decision is "final and binding on the parties". Only if the committee deadlocks does the matter proceed to arbitration.

joint committee[3] were Respondent George Harris, president of Local 82, and Stephen Cullen, from the Eastern Conference of Teamsters.[4] Respondent Bart Griffiths, business agent of Local 82, represented the grievants. Griffiths argued that other employees had walked off the job the same day without permission and had not been fired; that employer representatives had been present when the grievants left and did not fire them; that John Early had been sick when he left work; and that it had been discriminatory to fire grievants when the fifth employee had only been suspended for the same offense. He objected to the introduction of certain evidence, questioned Company witnesses, and allowed the grievants to make their own statements. Griffiths refused to make the argument considered by the Earlys to be most compelling, namely, that under the collective bargaining agreement, employees could leave unfinished work without permission on weekends.[5] John Early made this argument, among others, when reading from a prepared statement; Stephen Early also made a statement on his own behalf. At the close of the hearing, the grievants acknowledged they had been properly represented and were satisified that all relevant evidence was submitted to the joint committee. The joint committee upheld the discharges.[6]

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[3] The identical panel which heard this discharge grievance had heard each of four previous grievances filed by John Early. Petitioners *never* expressed any concern about Harris' impartiality at any time before the joint committee issued its decision upholding their discharges.

[4] Neither Cullen nor the Eastern Conference of Teamsters is a party to this litigation. The Eastern Conference is not a party to the collective bargaining agreement with the employer.

[5] In the proceedings before the district court, Petitioners conceded that their *entire* case was dependent upon their view that under the provisions of the collective bargaining agreement, employees could leave work early without permission on weekends. This construction of the collective bargaining agreement has been rejected by the joint committee, the district court and the court of appeals.

[6] The written decision upholding the discharges was signed by all four members of the joint committee.

Decisions Below

Petitioners filed a complaint in the United States District Court for the District of Massachusetts alleging that they had been discharged by Respondent Eastern Transfer in violation of the collective bargaining agreement and that Respondent Local 82 had failed to properly represent them by failing to investigate the grievance, prepare for the hearing, and presenting no case to the joint committee other then reading their grievances. They alleged that Respondent Local No. 82 failed to properly represent them because of John Early's failure to appear and testify on behalf of the Union in *Crowley* v. *Local 82*, 521 F. Supp. 614 (D. Mass., 1981) and because of their expression of support for the plaintiffs in that case.

The district court found that the Earlys had "failed to raise genuine issues of material fact with respect to the Union's representing them fairly in handling their grievance". (App. A-2). The district court rejected the Earlys' contention that their discharges were so clearly in violation of the contract that anyone disagreeing with their interpretation of the contract must be guilty of bad faith. While stating that Petitioners may have suggested a motive for their union's using less than its best efforts on their behalf, the court concluded that they "offered insufficient evidence of conduct or omissions to support an inference of the Union's breach of its statutory duty". (App. A-2). The court also rejected any theory that Union members on the joint committee owed a duty to deadlock the committee and thereby trigger the next contractual step of arbitration. (App. A-4).

The court of appeals affirmed. The court found that Respondent Griffiths had adequately investigated and presented the plaintiffs' grievances to the joint committee.[7] The court further found that plaintiffs waived their right to

[7] In their Petition, Petitioners acknowledge that, "standing alone, the propriety of this ruling would [not] be worthy of review by this Court". (Petition for Writ of Certiorari, page 7.)

claim that Harris' bias allowed the court to look behind the joint committee's award because plaintiffs failed to raise the issue of bias in a timely fashion. Finally, the court rejected plaintiffs' argument that Harris, as president of the Local, owed them a duty to deadlock the committee and, thereby, see that their grievance went to arbitration, finding such an "approach would alter the character of the joint committee from that contemplated in the collective bargaining agreement". (App. B-13.)

Reasons for Denying the Writ

In analyzing the nature of the question which Petitioners seek this Court to consider, it is appropriate to state at the outset those aspects of the decision below of which Petitioners do not seek review. Petitioners are not seeking review of the lower court's finding that Respondent Griffiths adequately investigated and presented their grievances to the joint committee. Nor are Petitioners seeking review of the lower court's finding that they waived their right to claim that Harris' bias allowed the court to look behind the joint committee's award because they failed to raise the issue of his purported bias before the joint committee.

Stripped of the very essence of their contentions before the courts below, Petitioners seek to have this Court address an abstract question of law and adopt a *per se* rule, divorced from any evidentiary considerations, requiring union members of joint committees to deadlock those committees by voting in favor of individual grievants who appear before the committee except in perhaps the case of the most frivolous of grievances. In so doing, Petitioners have misconstrued the nature of the joint committee system and the role it plays in the federal labor scheme. Moreover, Petitioners' claim finds absolutely no support in the case law. For these reasons, as will be set forth more particularly herein, Petitioners have failed to demon-

strate adequate grounds under Rule 17 of the Supreme Court rules for granting their petition for certiorari.[8]

Section 203(d) of the Labor Management Relations Act states, "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement". Thus, federal labor policy does not favor arbitration *per se* but rather the means selected by the parties for final adjustment of their disputes. Where the parties agree that a joint committee procedure[9] shall provide a conclusive resolution of their differences, federal labor policy can be effectuated only if this procedure is given full play. *United Steelworkers of America* v. *American Manufacturing Company*, 363 U.S. 564 (1960).

Recognizing the strong federal labor policy supporting the means chosen by the parties for finally resolving their disputes, this Court has consistently and unequivocally accorded joint committee awards the same weight as arbitration awards. See, e.g., *United Parcel Service* v. *Mitchell*, 451 U.S. 56 (1981); *Barrentine* v. *Arkansas-Best Freight System, Inc.*, 450 U.S. 728 (1981); *Hines* v. *Anchor Motor Freight*, 424 U.S. 554 (1976); *Humphrey* v. *Moore*, 375 U.S. 335 (1964); *General Drivers* v. *Riss & Co.*, 372 U.S. 517 (1963). The court below correctly followed this *overwhelming* body of precedent in

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[8] The decision of the court below is not in conflict with the decision of any other federal court of appeals or state court of last resort. The decision below is not in conflict with any applicable decisions of this Court. Finally, the instant case does not involve an "*important* question of federal law which has *not* been, but should be, settled by this Court". (Emphasis added.)

[9] Justice Aldisert of the Third Circuit Court of Appeals called the joint labor-management committee "a mature and enlightened method to resolve industrial disputes". He went further, stating, "These institutions implement the national labor policy mandated by Congress and will be given maximum respect by the courts". *Teamsters Local Union No. 30* v. *Helms Express, Inc.*, 591 F.2d 211 (3rd Cir., 1979).

concluding that the local Union representative to the joint committee owed no duty of *partiality* to the petitioners.[10]

Notwithstanding the foregoing, Petitioners argue that denial of a Teamster's grievance by a joint labor-management decision is akin to a decision by the union not to arbitrate a grievance. Such an argument is wholly lacking in merit. Absent the joint committee structure, a decision not to arbitrate would deprive a grievant of any hearing on his or her grievance. However, the grievants herein received a *full and fair hearing* before the joint committee. During the course of this hearing, Respondent Griffiths presented evidence and arguments on behalf of the grievants. He questioned Company witnesses and objected to the introduction of certain evidence. Griffiths and John Early reviewed Company records brought to the hearing pursuant to Griffiths' request. Moreover, the grievants were allowed to make their own presentations to the joint committee. Finally, and most significantly, had the joint committee rendered an award in favor of the grievants, said award would have been enforceable in federal court to the same extent as any arbitration award. *General Drivers* v. *Riss & Co., supra.*

Moreover, as the court below correctly concluded, the entire nature and purpose of the joint committee system would be irreparably undermined if the union members to such com-

[10] Unable to find any support for their position in relevant case law, Petitioners rely primarily on two law review articles and an isolated quote from the decision of the Eighth Circuit Court of Appeals in *I. H. Whitehouse & Sons* v. *Local Union 214*, 621 F.2d 294, 299 (8th Cir., 1980). Both of these law review articles were published three (3) years before this Court's decision in *Hines* v. *Anchor Motor Freight, supra*. Moreover, while these law review articles and quote from *Whitehouse* v. *Local 214* speak in terms of "collusive secret agreements" and "horsetrading", Petitioners did not present even a single piece of evidence from which any inference of "collusion" or "horsetrading" could be drawn. In this regard, it is particularly noteworthy that petitioners' own former counsel, in oral argument before the court below, conceded that Petitioners' conduct in leaving their job without express permission may have justified imposition of suspensions although not the discharges upheld by the joint committee.

mittees were held to owe a duty of *partiality* to the individual grievants who came before that committee. If such a duty were found to exist, union members on such committees would have little choice but to rubber-stamp the grievant's position except perhaps in the case of utterly frivolous grievances. In such circumstances, if the employer members of the committee, who owe no concomitant duty of partiality to the employer, were to find in favor of the grievant, the employer would be faced with an adverse award enforceable in federal court. Alternatively, were the employer members of the committee to find against the grievant, the committee would end up always deadlocked.[11] This is not what the employer bargained for, in good faith, when agreeing to be bound by joint committee awards.

Any broad finding by this Court that union members to a joint committee owed a duty of partiality to grievants appearing before said committee would result, in essence, in this Court's rewriting the collective bargaining agreements which call for joint committees. Such a result would serve as a death knell to the joint committee system. No employer could agree to a system where half the tribunal considering the grievance owed a duty of partiality to the grievants. If nearly two million Teamster members desire to rid themselves of the joint committee system, it is respectfully submitted that this result should come about through the collective bargaining process and not via judicial fiat.

Finally, contrary to Petitioners' assertion, the courts have not refused to scrutinize the critical conduct of union members to joint committees. As the court below recognized, joint committee decisions will be disregarded if shown to be tainted by fraud, bad faith, or bias. (App. B-10). See e.g., *Morris* v.

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[11] Under many Teamster collective bargaining agreements, the parties are left to economic recourse in the event of a joint committee deadlock.

Werner-Continental, Inc., 486 F.2d 1185, 1190 (6th Cir., 1972). Inasmuch as the joint committee decision herein was not tainted by fraud, bad faith, or bias, the decision of the joint committee denying Petitioners' grievances is final and binding as the collective bargaining agreement says it is.

Conclusion

For all the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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